IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4996 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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N B KAZI - Petitioner(s)

Versus

HIGH COURT OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MR ANAND for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1 - 2.
LAW OFFICER BRANCH for Respondent(s) : 1 - 2.
MR JB PARDIWALA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 23/11/2005

ORAL JUDGMENT

1.The short facts of the case are that the petitioner was served with the charge-sheet of demanding illegal gratification of Rs.5 from one of the litigants for

getting his work done speedily. The petitioner was serving as Clerk in the Court. It appears that when the said litigant namely; Dinesh Kumar Jatashankar complained before the learned Magistrate, his statement was recorded on oath by the learned Magistrate on 5.2.1990 and thereafter on that basis the charge-sheet was served upon him. The inquiry was held and it was found by the Inquiry Officer that the charges are proved of demanding illegal gratification by misusing the position as the employee of the Government.

2. The petitioner was heard for the penalty and ultimately on 4.3.1991 the learned District Judge, Bhavnagar passed the order of dismissal of the petitioner from the service forthwith. It appears that the petitioner carried the matter in appeal by way of Departmental Appeal before the Administrative Judge of this Court and in the appeal the appellate authority did not disturb the findings of proof of the charge, but found that the punishment is disproportionate and, therefore, the said punishment was substituted by reducing the petitioner to the stage of lowest pay-scale of Junior Clerk without any arrears of salary or seniority and the period under suspension has been treated as penalty and additionally the period from the date of

dismissal till reinstatement was also treated as the period under suspension by way of penalty, without any monetary benefits or allowances. It is under this circumstances, the petitioner has approached this Court by preferring this petition.

3. Heard Mr.Raval, learned Counsel for the petitioner, Mr.Pardiwala, learned Counsel and Ms.Reeta Chandarana, Ld. AGP for respondents.

4. Mr.Raval, learned Counsel for the petitioner raised the first contention that the finding of the Inquiry Officer and of the disciplinary Authority and also of the Appellate Authority are without there being any complaint by the Complainant and he further submitted that the disciplinary Authority had no lawful authority to pass the order and since in his submission the provisions of Section 161 of IPC would not be attracted and, therefore, he submitted that the conclusion by the lower Authority that the charges are proved is illegal and deserves to be quashed and set aside.

5. It is well settled that this Court in the matter of disciplinary proceedings is not exercising the power as that of Court of appeal. The statement of the litigant from whom the amount was demanded is recorded on oath before the learned Magistrate of the Court in which the

petitioner was working as the Clerk. Therefore, when the statement was recorded on oath of a litigant from whom the amount was demanded, it cannot be said that there was no complaint or that there was no sufficient evidence before the lower Authority to come to the conclusion that the charges are proved of demanding the illegal gratification. Further, the Inquiry officer, the Disciplinary Authority as well as the Appellate Authority have appreciated and reappreciated the evidence on record and have arrived at the finding of facts that the charges are proved. This Court while exercising power under Article 227 of the Constitution of India would not normally upset the finding, unless such finding is perverse to the records. No such case is made out by the petitioner to satisfy the Court that the finding is perverse to the records.

6. The contention raised on behalf of the petitioner that the petitioner was not in a position to pass the order as he had no authority and, therefore, the provisions of Section 161 of IPC would not be attracted, in my view, would not be much relevance and consequence because it was not a case for conducting criminal trial against the petitioner for imposing punishment as per IPC or Prevention of Corruption Act, but it was a case

of departmental inquiry, where the yardstick and the degree of proof would defer than that of criminal proceedings. Further, even if the petitioner had no authority for passing the order, it cannot be said that the petitioner in capacity as a Clerk could not expedite the procedural aspects of supplying the orders, etc. The demand of illegal gratification as per the statement of the complainant is for speedier work and the same cannot be interpreted to mean to exercise powers for passing the orders as sought to be canvassed on behalf of the petitioner. Further, it is recorded in the proceedings of inquiry that the petitioner did admit before the learned Civil Judge, Shri Modi for acceptance of the said amount. If an employee of the Court who is a Clerk in the present case has demanded or accepted the amount for speedier work of procedural aspect, then also such cannot be said as not at all touching to the authority of the employee of the Court. In any case, the finding of the First Disciplinary Authority as well as the Appellate Authority to the extent that the charges are proved cannot be said as beyond the scope of authority or cannot be said as perverse to the record of the case and, therefore, the said contention of Mr.Raval cannot

be accepted.

7. Mr.Raval, learned Counsel for the petitioner also contended that the punishment imposed upon the petitioner is disproportionate to the charges proved, whereas Mr.Pardiwala, learned Counsel appearing for the respondents submitted that this Court is having limited jurisdiction of judicial review against the imposition of punishment by the Disciplinary Authority and he has also relied upon the decision of the Division Bench of this Court in Special Civil Application No.5691 of 2002 dated 10.5.2005.

8. As such, the law is settled on the said aspects in as much as unless the punishment imposed by the Disciplinary Authority is wholly disproportionate or ex-facie shocks the conscious of the Court, this Court while exercising power under Article 226 or 227 of the Constitution of India would not sit in appeal over the decision of the Disciplinary Authority by evaluating the situation, keeping in view the aspects that whether “x” punishment was proper or “Y” punishment was proper. At this stage it would be profitable to make use of certain observations made by the Division Bench of this Court in the above decision in Special Civil Application No.5691 of 2002 which was also pertaining

to the case of judicial review against the decision of imposing punishment of compulsory retirement of a judicial officer. In the said decision after referring to various decisions of Apex Court, it was observed at para 15 of the said decision as under:

> “15.Having carefully gone through the Inquiry Report and the material on record, the High Court is of the considered opinion that the charges levelled against the delinquent are found to be fully proved. They are of very serious nature and such Judicial Officer, who has remained in service for nearly 5 years, cannot be continued any more in view of his aptitude towards the work. There is nothing on record to show that in fact he has improved his performance. It is admitted by him that even till today he is not able to achieve the norms laid down by the High Court though he is at present transferred to Amreli.

9. The above decision does reiterate the limited scope of judicial review to the discretion exercised by the employer to impose a particular penalty on the delinquent employee. The Hon'ble Supreme Court has repeatedly emphasised that the High Court cannot exercise appellate jurisdiction in such matters and

substitute its opinion for the one formed by the disciplinary authority. It has also been held that the punishment imposed by the competent authority cannot be modified. Therefore, substitution with a lesser penalty unless the Court is satisfied that the same is grossly disproportionate or shocking to the conscious of the Court or is so unreasonable that no person of reasonable prudence would have imposed such punishment in the facts and circumstances.

10. For the determination of the question as to whether the punishment imposed by the disciplinary authority is grossly or shockingly disproportionate, the Court has to take into consideration all the relevant factors, including the nature of charge proved, the past conduct of the employee, the punishment, if any, imposed earlier, the nature of duty assigned to the employee having due regard to their sensitiveness, exactness expected, norms, if any, laid down by the employer and above all, the paramount requirement of maintaining discipline in service.

11. In the said case, it was further observed by the Division Bench as under:

> “We may add that the position of a judicial officer is not akin to an ordinary civil servant.

> The judicial service is not a service in the sense of an employment. The judges discharge their functions while exercising the sovereign judicial power of the State. Their honest and integrity is expected to be beyond doubt. They must be totally committed to the cause of justice. Their conduct within and outside the Court must be exemplary. They are obliged to discharge their function in a manner which enhances the dignity of the institution of which they are the integral part. Their functioning must be such which instill confidence in the public in general and the litigants in particular. They must not do anything which shakes the people's confidence in the system of administration of justice."

12. It is true that the petitioner was not a judicial officer, but at the same time, the petitioner was a Clerk working in the Court, where the degree of accountability and responsibility would be more in comparison to the other Clerical posts in other department of the Government. Therefore, if such decisions are kept in mind and if the charges proved are considered, it can rather be said that a lenient view is already taken by the Appellate authority while

exercising the appellate power in the matter of substitution of penalty. Since this Court in normal circumstances would not sit in appeal over the decision of the appellate authority, the matter may not be considered for enhancement of the punishment, but in any case, it cannot be said that the punishment imposed is wholly disproportionate to the charges proved or is such which may shock the conscious of the Court and consequently attract the power of this Court of judicial review under Article 226 or 227 of the Constitution of India.

13. In view of the above, the petition fails. Hence, the same is dismissed. Rule discharged. Considering the facts and circumstances, there shall be no order as to costs.

23.11.2005 **(Jayant Patel, J.)**